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Supreme Court, U.S.
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No. 09-585

In The
Supreme Court of the United States

HARVEST INSTITUTE FREEDMAN FEDERATION, BLACK INDIANS UNITED LEGAL DEFENSE FUND AND WILLIAM WARRIOR,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR REHEARING

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February 16, 2010

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PETITION FOR REHEARING

This Petition for Rehearing is submitted under the provisions of Supreme Court Rule 44(2). It is filed by reason of the tentative resolution of claims by the United States in United States District Court for the District of Columbia in, Eloise Pepion Cobell, et al. v. Ken Salazar, Secretary of the Interior, et al., Case No. 1:96cv01285-JR a case involving the breach of duties owed by the United States to beneficiaries of trusts created under various treaties with Native Americans. The same mismanagement of trust responsibilities theory is applicable to the claims in this appeal, except the Petitioners here are persons of African Ancestry, so-called "Freedmen[1]." Rehearing is requested in order

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[1] According to correspondence from Paul Tsosie Chief of Staff to the Assistant Secretary-Indian Affairs, United States Department of Interior on December 28, 2009, to Petitioner representative, Angela Molette:

> "As you may know, "Black Indians" are known by many names throughout Indian Country. Depending upon the tribe in question, these people may be descendants of slaves, inter-married black and Indian mix-blood Indians, or other combinations of heritage that are recognized by the respective Indian tribes. In the case of the Five Civilized Tribes, as you note in your letter, these people are commonly identified as "freedmen" within their tribes. In many cases, they enjoy tribal membership, have their own bands and are recognized as a vital part of their tribes. As for blood quantum requirements for Federal programs, however, these determinations are necessary to respond to the strict dictates of the laws and regulations that guide the administration of these programs, designed for Indians because of their status as Indians. While some of the "Black Indians" you identify

to avoid the unlawful racial discrimination and perpetuation of historic injustice, that has characterized the treatment by the United States of Freedmen versus other Native American ethnic groups. The Cobell settlement is an event that occurred subsequent to the filing of the Petition for a Writ of Certiorari, in this matter.

U.S. Supreme Court review is requested of a U.S. Court of Claims trial court dismissal and United States Court of Appeals for the Federal Circuit affirmance of the Petitioners' putative class action which alleged, inter alia, that the United States as trustee mismanaged and breached duties owed to the beneficiaries of various trusts established by the terms of post civil war treaties between the so-called Five Civilized Indian Tribes ("the Tribes") and the United States. Under these treaties, the Tribes agreed to abolish slavery within their territories and to grant equal citizenship to their former slaves, the "Freedmen". In numerous instances, due to their condition of former bondage, the Freedmen were exploited. The benefits to which they were entitled under the treaties were, with the knowledge and complicity of the United States, not accorded to them or usurped. The Petitioners' claims were dismissed below on grounds that a breach of trust claim is

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may not meet these blood quantum requirements, this does not take away their right as tribal members, having full rights to tribally generated programs and services. We do appreciate your concerns in this area; however, we believe that the impacted tribes with these identified individuals have reached an accord with them with respect to citizenship, membership, services, and other tribal-oriented programs." (Emphasis added.)

subject to a six year statute of limitations under the Tucker Act and Indian Tucker Act, 28 U.S.C. §1505. The Petitioners' claims here, it is alleged by the United States, accrued at the latest in 1902 when Congress entered into allotment agreements with the Tribes, subdividing their territories into individual 40 and 160 acre parcels. Petitioners have argued that the statute of limitations should not begin to run on their claims until the trustee, here the United States, repudiates its trust responsibility to the Freedmen beneficiaries, an event that has not yet occurred. Neither the Court of Claims nor the Court of Appeals addressed Petitioners' repudiation argument. Petitioners' argument that the United States has mismanaged its trust responsibility to the putative Freedman class, has not been disputed by the United States. The United States merely contends that the claim is time barred.

Concurrently an action has been pending in the United States District Court for the District of Columbia, Cobell v. Salazar, Case No. 1:96-cv-01285-JR, alleging that the United States as trustee of certain individual Indian money trust accounts has mismanaged these trust accounts and its duty as trustee by failing to keep adequate records, destroying records, failing to account to trust beneficiaries and converting the beneficiaries' funds to the use of the United States.

Both Cobell and the Petitioners' cases allege that the United States as trustee, has mismanaged its responsibilities as a trustee and breached duties owed to the beneficiaries of a trust.

Cobell is now pending resolution. The Petitioners' grievances have not been adequately addressed by the United States. The Freedmen are U.S. citizens and have been exploited, ignored and relegated to second class status solely by reason of race. Settling Cobell, but not the Freedmen action, is a perpetuation of the historic harm visited upon this class of disadvantaged American citizens.

Rehearing is respectfully requested.

CONCLUSION

For the reasons stated above, this Court should consider the grant of the petition for rehearing.

Respectfully submitted,

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CERTIFICATION

The forgoing is restricted to the grounds specified in 44.2 Sup. Ct. R. and it is presented in good faith and not for delay.

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